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Ms Julia Morris  
Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

sent via email: jsct@aph.gov.au

**Joint Standing Committee on Treaties (JSCOT): Further inquiry into aspects of the Peru-Australia Free Trade Agreement (PAFTA)**

Dear Ms Morris

The Business Council of Australia is pleased to support PAFTA. Peru is one of South America's fastest growing economies, with significant opportunity for further growth in bilateral goods and services trade; investment; and in people-to-people ties. Australian companies are already substantial investors in Peru.

The Business Council wishes to take this opportunity to comment on issues included in JSCOT's further inquiry into the aspects of PAFTA.

► **Comments in relation to 'ongoing concerns over the increasing complexity created by the number of trade agreements, particularly multiple agreements with the same partner'.**

Regarding concerns 'over the increasing complexity created by the number of trade agreements, particularly multiple agreements with the same partner', the Business Council recognises that Australia and Peru will potentially become parties to three separate free trade agreements (FTAs), namely the TPP-11, the Pacific Alliance Free Trade Agreement currently under negotiation, and PAFTA.

However, it is important to emphasise that none of these agreements would *impose* complexity on Australian traders, who will always be able to continue trading under existing arrangements without any required change.

Rather, PAFTA and other prospective free trade agreements with Peru provide additional flexibility to Australian traders. Should they wish to avail themselves of the benefits available under PAFTA, they will be able to do so by identifying the applicable preferential rates of tariff and requirements for meeting rules-of-origin (ROO). DFAT and Austrade assist efforts to obtain this information through their websites and online tariff finder portals. Given that the prospective agreements provide new options and do not impose new obligations on Australian business, claims about the complexity of over-lapping agreements are exaggerated and are not a good reason for delaying PAFTA's ratification or the passage of its enabling legislation.

The Business Council also understands that Peru has made tariff concessions to Australia under PAFTA that are, in some cases, superior to the tariff outcomes under the TPP-11. We have received advice that Peru is providing market access for sugar in PAFTA that is not available in the TPP-11, as well as better commitments on a range of agricultural and industrial tariffs. This outcome suggests Peru was more willing to make concessions on a bilateral basis to Australia than it was on a

plurilateral basis in the TPP-11, where the outcomes would also have been enjoyed by other TPP-11 member countries.

Finally, it should be noted that Peru has not yet ratified the TPP-11 agreement. The Business Council understands that Peru's domestic processes for ratifying a bilateral treaty such as PAFTA are simpler than its processes for a plurilateral treaty such as the TPP-11, and this is one reason for anticipating Peru's ratification of PAFTA to occur before it joins the TPP-11. Therefore, the best way to secure the benefits of Peru's market access offers to Australia will be to ratify PAFTA now, rather than staking these benefits on the prospect of a still uncertain TPP-11 ratification by Peru.

► **Comments on 'the specific inclusion and operation of the Investor-State Dispute Settlement provisions in recently concluded trade agreement'.**

ISDS provisions need to be considered from the perspective of Australian investors abroad, and not just in terms of the effect of ISDS domestically inside Australia. Treaty-backed ISDS provisions provide an important avenue for Australian investors to seek remedy in the event of arbitrary, opaque or unfair decisions by foreign governments.

Australia has existing, albeit more old-fashioned, Investor-State Dispute Settlement (ISDS) arrangements with Peru through the current Investment Protection and Promotion Agreement (IPPA) between the two countries. Therefore, ISDS is not new in Australia's treaty relationship with Peru.

Indeed, the existing IPPA will be terminated upon entry-into-force of PAFTA, and the old ISDS provisions replaced with updated provisions that include new limitations and safeguards on ISDS proceedings. For example, there are new provisions on the transparency of arbitral proceedings and safeguards on the right of both Australia and Peru to regulate for environment, health and other social policy objectives. These provisions are not part of the existing ISDS arrangements with Peru. It would be ironic, therefore, if opponents of ISDS sought to delay the ratification of PAFTA, as they would in effect be supporting the retention of older and less circumscribed ISDS arrangements.

ISDS is also part of the TPP-11 agreement. These provisions will come into effect with Australia once the TPP-11 enters into force and if Peru ratifies the TPP-11. While the ISDS provisions in PAFTA and the TPP-11 are very similar, the PAFTA ISDS provisions contain additional safeguards for public policymaking, such as an outright carve-out for public health measures and new general exceptions. Again, therefore, it would seem somewhat illogical to oppose PAFTA on the basis of opposition to ISDS in general, given that ISDS arrangements with Peru will in any case continue to exist through either the TPP-11 or the old IPPA and the PAFTA arrangements would restrict ISDS more than either of these alternatives.

Given the importance of the ISDS provisions in PAFTA for protecting Australian investments in Peru's mining sector, the Business Council recommends that the Australian Parliament support the early ratification of PAFTA and the passage of its enabling legislation.

► **Temporary entry visas under the TPP-11 and PAFTA.**

The Business Council also wishes to take the opportunity to comment on provisions covering the temporary entry of business persons or skilled professionals.

The Business Council's general position is informed by the reality that experienced foreign professionals, specialists and technicians play an indispensable role in Australia's economy and economic development, and in the training and transfer of new skills to Australian workers.

The ability to recruit and employ skilled workers from abroad is also important for encouraging foreign investment in Australia in preference to other locations, and to boost the competitiveness of Australian goods and services in international export markets, and for encouraging regional development in Australia in locations where the requisite skills may not be readily available.

It is important, therefore, that Australia maintain a broad view of the benefits of foreign temporary business migration and a visa system that supports this outcome.

In this respect, Business Council considers that PAFTA will contribute positively to international recruitment possibilities by introducing some additional flexibility to recruit foreign skilled workers, for example the two-year length-of-stay commitments in PAFTA for contractual service suppliers (compared to the one-year outcomes in the TPP-11). Peru is also a potential source of intra-corporate transferees to Australia, given the significance of some Australian investments in Peru.

In summary, the Business Council strongly supports PAFTA, and recommends its ratification and passage of enabling legislation by the Australian Parliament as soon as possible.

Thank you for the opportunity to contribute to this inquiry.

Yours sincerely

**Jennifer A. Westacott AO**  
Chief Executive